

1 answered and interrogated to that effect. I think  
2 there are as many as 60 different attaching entities  
3 in the Gulf service territory.

4 ADMIN. JUDGE SIPPEL: All right. And  
5 you're looking for the same information with respect  
6 to all, assuming that 60 is the number then, but you  
7 want it for all 60?

8 MR. COOK: No. See that's the confusion  
9 here, your honor. We're being directed to a whole  
10 series of files that have make-ready for all of these  
11 entities and for ourselves with the explanation that  
12 they gave in their September 30th supplemental  
13 responses, you know, go look in our permit logs,  
14 they're arranged chronologically. That doesn't tell  
15 us what the question we're asking is. The question  
16 we're asking is for the poles that you say are at  
17 full capacity, not the universe of all of their  
18 poles, or even the universe of all of the poles with  
19 make-ready from our perspective, but for the poles  
20 that you're saying are at full capacity, give us a  
21 couple of pieces of information that will allow us  
22 and our experts to challenge your assertions that

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1 they're at full capacity. The pieces of information  
2 are how many -- who else is on those poles besides  
3 us, when did the other people's attachments commence,  
4 were they before or after us, and where are those  
5 third-party attachments located if you're making  
6 contentions about improper clearance, and finally,  
7 were you reimbursed, were you paid by those attaching  
8 entities. And this is very important even in the  
9 context of the newer contention that hey, all of our  
10 poles that have make-ready are full, because we know  
11 from the documents they have produce that with  
12 respect to poles that we're on, lots of those poles  
13 did not require make-ready, so what we've been trying  
14 all along to do is to get some information from them  
15 that say, okay, here complainants, here are the poles  
16 that we contend that are full capacity for whatever  
17 reason and here are the other people on those poles  
18 so that we can sit down and take a look at it and say  
19 we don't think that's at full capacity. Now for --  
20 sitting here -- standing her today, the answer to us  
21 still is go to our offices and look at all of our  
22 files, make -ready and non make -ready, your

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1 attachments and other people's attachments, and  
2 that's why we're seeking some more precise  
3 segregation, so that we can really reduce your honors  
4 work as well as ours.

5 ADMIN. JUDGE SIPPEL: Well, thank you. I  
6 think that it almost sounds like a chicken and egg  
7 situation. They're going to have to need to know  
8 which are, whatever your system may be, but which  
9 poles you're going to be relying upon that you are  
10 entitled to additional reimbursement for, i.e., those  
11 which meet the category of full capacity. And once  
12 those are identified, you know, then you can, between  
13 the -- somehow or other, there the request can be  
14 followed up just along the lines that Mr. Cook was  
15 talking about. You know, who's on those poles. You  
16 know, they're looking for justification as to who you  
17 come up with the idea that, how you prove that these  
18 are at full capacity, so that seems to be right at  
19 the heart of the case. But I don't see how that they  
20 can be directed just to these records, even if they  
21 are kept in the normal course of business if they  
22 don't have the initial ingredient, which is, you

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1 know, alleged full capacity.

2 MR. LANGLEY: Well, and that's one of the  
3 fundamental differences in legal positions here,  
4 because we are saying that any pole that required  
5 make-ready was a full capacity pole. And our make -  
6 ready work orders are only for poles that required  
7 make-ready. Now the permit range may have poles that  
8 did not require make ready, but that's why it's  
9 important to tie the permit number to the  
10 distribution service order. And the distribution  
11 service order will lay out, as the Knology documents  
12 submitted in the proffer laid out, on a pole -by-pole  
13 basis, who was on the pole. And for example, does  
14 your honor have the proffer that we submitted on  
15 October 17th?

16 ADMIN. JUDGE SIPPEL: I'm sure I do, but  
17 not right at my fingertips. I think I know what  
18 you're referring to. But while I'm looking -- let me  
19 find what I have.

20 MR. LANGLEY: And I don't mean to make  
21 this part of the hearing more complex than it needs  
22 to be, and this may actually be something we can --

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1       okay -- good.

2               MR. SEIVER: Excuse me, your honor, I  
3       have an extra copy of it.

4               ADMIN. JUDGE SIPPEL: Do you. Thank you.  
5       I think I -- okay, here we go. All right. I have  
6       it in front of me.

7               MR. LANGLEY: Okay. A couple of examples  
8       that I wanted to refer you to. First, if you would  
9       turn to page K -42, which is within Exhibit 5 in the  
10      proffer.

11              ADMIN. JUDGE SIPPEL: Oh, I see what you  
12      -- this is -- yes, I think I do have -- let me see --  
13      I have that tab in it. Where are you at?

14              MR. LANGLEY: K-42. What we did is just  
15      for the sake of being able to refer to specific pages  
16      in the proffer, we created new labels for these  
17      pages. It's K-42.

18              ADMIN. JUDGE SIPPEL: Well, I got these  
19      Exhibit numbers going 1 through 5.

20              MR. LANGLEY: Exhibit 5.

21              ADMIN. JUDGE SIPPEL: It's Exhibit 5.  
22      Okay. I got it. Yes. K-42?

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1 MR. LANGLEY: Page 17. There should be a  
2 number under K-42.

3 ADMIN. JUDGE SIPPEL: Page 17. Got it.

4 MR. LANGLEY: All right. There's a map  
5 number on there. And then for the poles in that map  
6 that have been permitted that required make -ready,  
7 there is an identification, pole number 91, and it  
8 says Bell South had to lower, Comcast had to lower.  
9 So we know Comcast, one of the complainants, was on  
10 the poles. And on down for the next two pages,  
11 there's even further detail provided beginning at  
12 page 20 where there are pictures taken, and not all  
13 of the work order packets have pictures, this one  
14 just happened to. So there are pictures of some of  
15 the specific poles that required make-ready.

16 ADMIN. JUDGE SIPPEL: I'm looking at this  
17 pole on page 20. Just arbitrarily, would you  
18 consider that pole to be at full capacity?

19 MR. LANGLEY: We would at the time the  
20 make-ready occurred.

21 ADMIN. JUDGE SIPPEL: All right. The  
22 make-ready occurs and then does it change a category

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1 at some point? Does it under your definition of full  
2 capacity, does it change?

3 MR. LANGLEY: One of our contentions, and  
4 it has been our contention since we submitted the  
5 description of evidence, actually before then, I  
6 think when we requested the hearing, has been that,  
7 you know, our willingness to expand capacity cannot  
8 be held against -- if we're going to have prove full  
9 capacity to be entitled to just compensation, we  
10 don't think that our willingness to work with cable  
11 operators, telecom companies should be held against  
12 us. And so what we --

13 ADMIN. JUDGE SIPPEL: I see.

14 MR. LANGLEY: -- what we would say is  
15 that at the time this make-ready was performed, if  
16 there had to be make-ready performed on the pole for  
17 an additional party to get on, and Comcast was on it,  
18 that was a crowded pole.

19 ADMIN. JUDGE SIPPEL: Okay.

20 MR. LANGLEY: And not only was it a  
21 crowded pole, but we have a telecom company out there  
22 wanting to get on at a higher price.

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1                   ADMIN. JUDGE SIPPEL: Ad you'd be able to  
2 line this up pole-by-pole?

3                   MR. LANGLEY: Yes. For these make -ready  
4 work orders.

5                   ADMIN. JUDGE SIPPEL: Okay. Well, it  
6 just seems to me that it's premature. It's premature  
7 in terms of the depth. And certainly the depth of the  
8 discovery that you're talking about, Mr. Cook, should  
9 not be -- I mean it doesn't have to go the whole  
10 universe according to what I'm hearing from Mr.  
11 Langley. All you need is proof with respect to poles  
12 that they're claiming are at full capacity.

13                  MR. COOK: Right. We want to know -- and  
14 that underlies a lot of the request, but certainly  
15 central here to interrogatory eight is which poles  
16 are at full capacity, and Mr. Langley has drawn the  
17 court's attention to a couple of pages, like K-42-20,  
18 and said, well, there's an example of one that's at  
19 full capacity, that doesn't provide the, you know,  
20 all of the information certainly that we're seeking.

21                  And I would argue we're not trying to overdo it  
22 here, your honor. We're simply trying to say who

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1 else is on those poles and when did those attachments  
2 take place. We don't know that, I think, from this.  
3 We certainly don't know -- Mr. Langley alluded to  
4 make ready. We don't know when, if there was make -  
5 ready done here, it was done, I believe. And we  
6 certainly don't know the last category, which we've  
7 been trying to understand all along, which is in  
8 connection with this pole, are you out -of-pocket.  
9 Have you experienced some loss with respect to this  
10 pole? And I think what your honor was saying a  
11 moment ago, before Mr. Langley spoke, is the core of  
12 what we're trying to get here, which is can we have  
13 some segregation, and even if they're going to rely  
14 only on this, because as your honor said many times,  
15 it's their burden of proof, not ours. And they can  
16 just say, well, this is all you're going to get. But  
17 can we have something like this with respect to all  
18 of the poles that they say are at full capacity, so  
19 that we can do our best to challenge it?

20 ADMIN. JUDGE SIPPEL: Mr. Langley.

21 MR. LANGLEY: What they're asking for,  
22 it's not like five of these.

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1 ADMIN. JUDGE SIPPEL: I understand.

2 MR. LANGLEY: We're talking about  
3 documents that range the entire system. And I can't  
4 tell you how high it would be, but it would be a high  
5 stack of documents if we were to do that for each of  
6 these, which is why we have invited them, asked them,  
7 and given them detailed instructions on how they  
8 themselves can look at the documents as they are kept  
9 in the usual course of business and pull this same  
10 information.

11 MR. COOK: But never geared to the poles  
12 that you say are at full capacity. That's the  
13 problem.

14 ADMIN. JUDGE SIPPEL: All right. Wait a  
15 minute. Let's not get carried away here. You know,  
16 you're all making excellent points. But let me just  
17 -- it would seem to me the way to get at this would  
18 be to take some kind of a sampling of what is  
19 representative of the types of poles that Mr. Langley  
20 is and Gulf Power is taking the position are at full  
21 capacity. I mean he's just laid out an awful more  
22 than I'd ever heard before. Take -- you know, he can

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1 give you -- let me take a number. He can give you 20  
2 of these poles detailed with all of this that's like  
3 in this proffer, and you pick out 10 that you want to  
4 audit. I mean I'm throwing these numbers out. But  
5 if you pick out ten, and then you say that, okay, I  
6 want to see all of this discovery with respect to  
7 these 10 poles and somehow or other you can come to  
8 an -- or Gulf Power will come to an agreement that  
9 these are representative of the universe of the poles  
10 in terms of, you know, the proof that they're relying  
11 on. Then why would it then be necessary to get all  
12 that detailed proof with respect to every single  
13 pole, because of they're wrong, you know, if you're  
14 right and they're wrong, or they're right and your  
15 wrong, I mean in terms of in this hearing, that would  
16 be the end of the need for the evidence seems at this  
17 stage.

18 MR. COOK: Your honor, they might jump at  
19 the chance that you've just offered to take a sample,  
20 but we are very much focused on the Alabama Power's  
21 exact language which said to prove with respect to  
22 each pole that it is at full capacity. I understand

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1 in the role of the arbitrator, the court is here to  
2 make sure no party imposes an unreasonable burden on  
3 the other, but from our perspective, there are a very  
4 limited finite number of poles that could truly be  
5 said to be at full capacity given the way the  
6 industry works and we are entitled, under Alabama  
7 Power, legally to a showing as to which of those  
8 poles, for each of those poles, are at full capacity  
9 and why. Now if they want to rely on a sample, we'll  
10 do our best to audit that and challenge that, but it  
11 is -- providing them the fig leaf, if you will, of a  
12 sample does not come up to the standard of what both  
13 the hearing designation order and your honor's  
14 reference to pinning poles down one -by-one and APCO  
15 all said.

16 ADMIN. JUDGE SIPPEL: Well, let me  
17 deposit this, too. Before any of the complainants  
18 would be required to pay the bill that they submit on  
19 all the full capacity poles, the parties would be  
20 entitled to a full -blown evidentiary hearing with  
21 respect to each pole that you're being charged  
22 additional monies for. All right? However, if it

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1 turns out in the first instance that based on some  
2 kind of a representative sampling, they're unable to  
3 meet the standard of full capacity as a matter of  
4 law, as a legal matter, if -- well, I don't want to  
5 go beyond that kind of a statement - but there is a  
6 record determination of a reasonable sampling of  
7 poles to be able to say yes or nay -- you can't say  
8 it in the abstract. You can't make a determination  
9 on the abstract. Even if they say well, all of our  
10 poles are at full capacity because they've had a  
11 make-ready order, they've had this, they've had that  
12 and the other thing, well, you know, saying that is  
13 one thing, but actually getting it on the record in  
14 an evidentiary form and then having some degree of  
15 expertise address the question, it seems to me that  
16 if the sampling were significant enough, that it  
17 wouldn't be necessary to go down and get all the  
18 nitty proof of every one of these poles, at this  
19 stage. Now, of course, if it turns out that they are  
20 entitled as a matter of law to charge you all of  
21 then, you know, then they might have to be -- then  
22 either at some level of the case, either at -- or if

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1 it comes back to me, yes, there'd be some kind of an  
2 auditing with respect to each of those poles, but the  
3 standard would be set. So it wouldn't be, you know,  
4 it doesn't require -- well, obviously I'm staggering  
5 the proof with respect to your recovery.

6 MR. COOK: I think the problem that we  
7 would have with that, and I'd defer to my senior  
8 colleague, Mr. Seiver, here is that this is a  
9 constitutional claim. This is not a claim that is an  
10 administrative one or one of first impression or of  
11 what's fair. And in order for them to get past the  
12 liability phase, as it were, of this evidentiary  
13 hearing to all their valuation and how they're going  
14 to claim that they're not getting various FERC Form 1  
15 accounts, they have got to show, with respect to each  
16 pole, those two elements that the Alabama Power  
17 court said were integral to a Fifth Amendment takings  
18 claim, which is the only legal theory that they're  
19 going under here, and that those are that each pole  
20 be a full capacity, and that there be a demonstrated  
21 foreclosed higher value use. In other words, that  
22 they were, in the vernacular phrase of the Alabama

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1 Power, out more money. In other worse, they've got  
2 to show that before you get to valuation. So if we  
3 were to have a sample and say, well, let's look at  
4 these, and maybe they'll pick their 20 strongest  
5 poles, poles, for example, that, I'm not saying we  
6 would do this, but that are limited by FAA height  
7 regulations or aesthetic regulations of a  
8 municipality that really and truly are at full  
9 capacity. If you were to make a determination about  
10 our liability based on those poles, and then say,  
11 okay, now let's proceed to valuation, they get \$20.00  
12 more per pole, what have you, and now, oh, by the  
13 way, before you actually have to pay, you can go back  
14 and have a full blown hearing on all of the detailed  
15 poles. That's, I would argue very respectfully,  
16 taking the cart before the horse.

17 ADMIN. JUDGE SIPPEL: All right. Well,  
18 let me try one more time. The sampling could be done  
19 based on -- I mean you wait until the Osmose report  
20 comes in. They're going to come in with these pre -  
21 Osmose report maps where you're going to have circled  
22 full capacity poles. They pick out ten. You pick

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1 out ten. And, you know, from that universe, do we --  
2 I'm asking the question, you know, at this stage  
3 rhetorically, you know, is there a sufficient basis  
4 upon which to come up with a determination as to  
5 whether or not it's possible. Is it possible to  
6 prove that you do have a fully -- you do have a pole  
7 at full capacity recognizing the fact that we have  
8 already got a concession on the record that there  
9 isn't too many poles that you're going to have that  
10 you can't somehow or other increase it to accommodate  
11 somebody else or some other need? I mean it's kind  
12 of a -- well, I'm just posing this question as,  
13 again, as a rhetorical hypothetical.

14 MR. SEIVER: Your honor, I got to tell  
15 you. I'm thinking that maybe we're on to something  
16 here. Because this could be -- and I wasn't sure --  
17 I was trying to take notes as you were talking -- if  
18 --

19 ADMIN. JUDGE SIPPEL: Don't get too  
20 excited. Mr. Langley will maybe pull back --

21 MR. SEIVER: Right. He might say, no,  
22 John, that's not the way I understand it. Go ahead.

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1       And if I like it -- what is the old Marx Brothers  
2       thing? Whatever it is you want, you know, whatever  
3       it is, I'm against it. So --. What your honor was  
4       talking about is somehow or other having, I don't  
5       want to call it a mini -proceeding or a mini -hearing  
6       but almost like a preliminary analysis of okay, Mr.  
7       Langley, you take your best shot. Give me your best  
8       poles that you think, with all the backup data,  
9       everything, you know, make-ready, who's on it, all of  
10      that for maybe 10 or 20 poles. And then say, all  
11      right, and you, complainants, can take those same,  
12      look at those, and propose your own 10 or 20 poles  
13      and limit it to just discussing those and, as your  
14      point that you made, that if they couldn't make it as  
15      a matter of law on those, then you say, well, the  
16      hearing is done. They took their best shot on what  
17      they thought were their best poles and didn't make  
18      it, fine. And if you say -- maybe your honor would  
19      say, you know what, that pole number 196 -37 is in a  
20      strange location because there's a railroad track or  
21      an FAA or something and it can't be changed -out, any  
22      pole that's like that, Mr. Langley, that you can find

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1 of your 150,000 poles, I will consider that in  
2 another hearing for purposes of awarding just  
3 compensation. And if your honor gave a parameter  
4 such as that, then I do see a real streamlining of  
5 this entire case. Instead of having to come in for  
6 150,000 poles or I think Mr. Langley wanted to do  
7 what, 78 percent of every pole on a sampling,  
8 instead, look at the samples of, you know, like the  
9 three-pole proffer. Take the best ones. These are  
10 the ones. Give all the backup with make-ready, who's  
11 on it and whatnot, and let us duke it out at a  
12 hearing as to whether or not that is a full pole and  
13 what the unreimbursed costs were for that pole, if  
14 there are any, and what should be the way to value  
15 it. And your honor then said, okay, I've looked at  
16 these 20 poles. No, no, no, no, no, yes, no, no, no,  
17 yes. And say let's say there's 2 of those 20 that  
18 you truly believe are defined as full capacity poles  
19 that maybe can't be expanded except our approach or  
20 that you say really are full under Mr. Langley's  
21 approach, and poles that meet that definition  
22 throughout the service area, then give Mr. Langley

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1 the opportunity to go back, dig out whatever you need  
2 for those poles, however many you think there are in  
3 your service area that meet that standard, meet that  
4 analysis, put them up there, and then we'll to trial  
5 on those.

6 ADMIN. JUDGE SIPPEL: Well, something  
7 like that.

8 MR. SEIVER: That's -- kind of what I was  
9 listening to you say, and I do think, and one of the  
10 reasons we were doing the clarification and the  
11 alternative cost methodology, and even our motion to  
12 dismiss, your honor, was to try and say let's figure  
13 out legally whether a pole that's had make -ready in  
14 its life at any time is deemed full in its life at  
15 any time, 2000, 2001, 2002, because maybe it was  
16 made-ready in 2001 and it had an extra three feet of  
17 space, so it's not at full capacity. Or maybe it was  
18 made-ready in 2004 but actually in 2000, it did have  
19 space. Instead of trying to do that for every single  
20 pole in their entire inventory, maybe we do take a  
21 sampling that Mr. Langley's free to pick whichever  
22 ones he wants, do all the backup data, and say here's

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1 our best shot. We think all of these poles are full  
2 and anything that's like them. And we say no, we  
3 don't think any of them are. And your honor says  
4 yep, yep, nope, nope, yep, whatever it might be. And  
5 then once we come up with a definition, then Mr.  
6 Langley could go pull everything that's needed, and I  
7 think that would -- then we don't need to see -- we  
8 don't need to go digging through 12 offices through  
9 file cabinets to find out if this make-ready document  
10 is going to be something that's going to be relevant  
11 to determining whether a particular is full or not.  
12 We don't know which ones the y're claiming are really  
13 full, and it'd be the kind of thing well, okay,  
14 here's a make -ready document on this pole, I don't  
15 know if he's going to claim that pole is full.

16 ADMIN. JUDGE SIPPEL: Okay. I've heard  
17 enough on that. But that's essentially the scenario  
18 that I was contemplating as I'm seeing what's  
19 involved here. I mean what's prompting me to say  
20 this is because when I'm seeing the scope of the  
21 discovery that, you know, that this could conceivably  
22 lead to, and as I said before, what I would

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1 contemplate would be that, as you put it, Mr. Seiver,  
2 that Mr. Langley say 10 poles which give -- which are  
3 the strongest to his case. But you would have a  
4 universe beyond those 10 poles from which to  
5 arbitrarily or however way you would want to select  
6 10 others let's say that you would want to examine  
7 for the same purpose. And then you would have your  
8 respective experts, you know, analyze the full field  
9 of the poles. And, you know, the parties would have  
10 to be -- you'd have to somehow or other be in  
11 agreement that whatever was resolved with respect to  
12 that scope of the evidence would control the outcome  
13 of the case without, of course, waiving your rights  
14 to appeal. You can go up, obviously, as I expect if  
15 there is a loser, a loser will go up, so. But --  
16 well, you know where I'm going, and you know why I'm  
17 going there. But let me ask the Bureau. Would,  
18 within the broad framework of what I'm outlining  
19 here, Mr. Shook or Ms. Griffin or whoever, would the  
20 Bureau have a position on this, or would you want to  
21 consider this? Is this too quick and early or?

22 MS. GRIFFIN: I think we'd have to go

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1 back and think about and talk amongst ourselves,  
2 people upstairs.

3 ADMIN. JUDGE SIPPEL: Yes.

4 MS. GRIFFIN: It sounds -- I mean it  
5 sounds, your honor, like there are very large  
6 discovery issues here, and it seems to me just  
7 hearing this that it might make sense to have some  
8 sort of sampling to streamline things and get a  
9 handle around some of the legal issues here.

10 ADMIN. JUDGE SIPPEL: Yes.

11 MS. GRIFFIN: But I' d have to just talk  
12 back upstairs with the Board.

13 ADMIN. JUDGE SIPPEL: Thank you. Thank  
14 you. That's about as best as I can leave it right  
15 now. But I think that the reason that this case got  
16 set into hearing was because there was no way that  
17 there could be a determination of, based on  
18 substantial evidence, as to, you know, what would be  
19 a full capacity pole. If we have substantial  
20 reliable evidence, even though it's not the whole  
21 universe, as to what constitutes a pole, what does to  
22 does not constitute a pole that's at full capacity,

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1 that, you known, that might considerably move it  
2 along.

3 MR. SEIVER: And, your honor, just as a  
4 follow-up to that, I think if we have, for example,  
5 just 20 poles, then our discovery request would be  
6 much easier because of we know --

7 ADMIN. JUDGE SIPPEL: Well, the night  
8 follows the day on all of this.

9 MR. SEIVER: Okay.

10 ADMIN. JUDGE SIPPEL: Yes. All right.  
11 Where does that leave us. I've got -- this takes me  
12 to interrogatory 20, 34, 35, and 46. I think -- it  
13 seems to me that -- is there any particular one of  
14 these interrogatories where there's really a sticking  
15 point? Mr. Cook?

16 MR. COOK: Just taking a moment as I go  
17 through it and listening to your exchange with Mr.  
18 Seiver, I think number 20 is certainly one that comes  
19 back to the difficulty we've had where we're again  
20 saying which of the poles are full, because the focus  
21 this one was which ones have you changed --out to  
22 accommodate complainants. And we pointed out in our

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1 reply brief filed a week or so ago, you know, our  
2 clients, in many cases, have been on these poles for  
3 decades. You say that you've had new people come  
4 along and that you've done change -outs for them.  
5 Have you done any change -outs to accommodate us? Or  
6 are you contending that change -outs done for new  
7 people, which the new people have paid for, also  
8 accommodate us in such a way that we should be  
9 required to pay more money? And so I think here,  
10 what we said in our third motion to compel, is  
11 they've come back to us and said, all poles which  
12 required make-ready before complainants could attach  
13 were at full capacity. So that's why I've said  
14 several times today, we've come to understand now  
15 that they're not going to identify individual poles  
16 absent some sort of procedural mechanism like the one  
17 that you and Mr. Seiver were talking about. And  
18 they're just going to say all poles that required  
19 make-ready. So then interpreting this interrogatory,  
20 we would say, well, are you now saying then that  
21 you're claiming all poles that required make-ready at  
22 full capacity? Which are those poles that we are on,

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1 because it would have to be poles that we are on for  
2 them to charge us more, required make -ready? But I  
3 think -- I'm not sure. I have to be honest, I'm not  
4 sure where to go with this discussion given that  
5 there may be some more substantial procedural  
6 modification in terms of what you and Mr. Seiver have  
7 talked about. I mean certainly here, your second  
8 discovery order said to Gulf Power again, you know,  
9 you guys have got to comply, you've got to give some  
10 more specifics. And their September 30th  
11 supplemental responses said the documents from which  
12 the response to this interrogatory could be derived  
13 or ascertained are in the make -ready work orders.  
14 So, we're back to the same square that I've discussed  
15 in relation to other document requests this morning,  
16 which is okay, please tell us which poles you're  
17 claiming are at full capacity.

18 ADMIN. JUDGE SIPPEL: Well, I think we've  
19 passed that hurdle at this point. Obviously, in  
20 order to put you to the burden of going and looking  
21 at their records that are kept in the ordinary course  
22 of business, you're entitled to know which poles that

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